

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EVELYN DELGADO

Plaintiff.

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security

Defendant.

CASE NO. 06cv2063-L (NLS)

ORDER

ORDER

**(1) ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;
(2) DENYING PLAINTIFF'S
MOTION FOR REMAND OR
REVERSAL;
(3) GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT;
(4) AFFIRMING THE DECISION OF
THE COMMISSIONER OF SOCIAL
SECURITY**

Plaintiff filed the instant action for judicial review of denial of her application for social security disability benefits. She subsequently filed a motion for reversal and/or remand, requesting reversal of the Administrative Law Judge’s (“ALJ”) denial of her application for benefits. The Commissioner filed a cross-motion for summary judgment. The case was referred to United States Magistrate Judge Nita L. Stormes for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(c)(1)(c).

Plaintiff alleged she became disabled due to knee pain, including a tear in the outer half of the meniscus, shoulder pain, including partial tear in a tendon, and degenerative disc

1 disease in the cervical spine. Plaintiff claimed that the denial of benefits was not based on
 2 substantial evidence, was arbitrary and that the ALJ should have further developed the
 3 record. Upon review of the record and the parties' motion papers, Judge Stormes
 4 recommended denying Plaintiff's motion and granting the Commissioner's cross-motion.
 5 Specifically, she found the ALJ's finding of no disability was based on substantial evidence
 6 and the circumstances did not require the ALJ to further develop the record. Neither
 7 Plaintiff nor the Commissioner filed objections to the report and recommendation.

8 A district judge "may accept, reject, or modify the recommended decision" on a
 9 dispositive matter prepared by a magistrate judge proceeding without the consent of the
 10 parties for all purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall
 11 make a *de novo* determination of those portions of the [report and recommendation] to
 12 which objection is made." 28 U.S.C. § 636(b)(1). Section 636(b)(1) does not require some
 13 lesser review by the district court when no objections are filed. *Thomas v. Arn*, 474 U.S.
 14 140, 149-50 (1985). The "statute makes it clear that the district judge must review the
 15 magistrate judge's findings and recommendations *de novo if objection is made, but not*
 16 *otherwise.*" *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc),
 17 cert. denied, 540 U.S. 900 (2003) (emphasis in original).

18 Accordingly, in the absence of any objections, the report and recommendation is
 19 **ADOPTED**. It is hereby further **ORDERED** as follows:

- 20 1. Plaintiff's motion for remand and/or reversal is **DENIED**.
 21 2. The Commissioner's motion for summary judgment is **GRANTED**.
 22 3. The Commissioner's decision to deny benefits is **AFFIRMED**.

23 **IT IS SO ORDERED.**

24
 25 DATED: August 22, 2007

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 27 
 28 M. James Lorenz
 United States District Court Judge

1 COPY TO:
2 HON. NITA L. STORMES
3 UNITED STATES MAGISTRATE JUDGE
4 ALL PARTIES/COUNSEL
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